

HOUSE BILL 1821
By Walley

AN ACT to amend Tennessee Code Annotated, Title 37 and Title 40, relative to violent adolescents.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known as the "Violent Adolescent Act of 1997."

SECTION 2. Findings. The General Assembly finds that the issue of commission of violent offenses by adolescents is a serious concern for the citizens of Tennessee. The General Assembly further finds that the current options for dealing with violent adolescent offenders are ineffectual in achieving an appropriate balance between Tennessee's long-standing public policy of providing treatment and rehabilitation services to juveniles while insuring the protection of its communities. Therefore, the General Assembly finds that it is necessary to provide additional options for violent adolescent offenders in the adult criminal system which will address the specialized issues of this population. Transfer to the adult criminal system will separate violent adolescent offenders from the less serious offenders who are more likely to benefit from the treatment and rehabilitation services provided in the juvenile system. Transfer to the adult system will provide for a longer period of incarceration for violent adolescent offenders than is possible in the juvenile system while addressing issues that will assist these violent adolescent offenders in becoming productive citizens upon their release back to the community.

SECTION 3. Tennessee Code Annotated Section, 37-1-134 is amended by deleting (a) and (a)(1) and by substituting instead the following:

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(a) After a petition has been filed alleging delinquency based on conduct which is designated a crime or public offense under the laws, including local ordinances, of this state, the court, before hearing the petition on the merits, shall have the authority to transfer the child to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction under the following conditions:

(1) If the juvenile was sixteen (16) years of age or more at the time of the alleged delinquent conduct and was charged with the offense of first degree murder, second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping, especially aggravated kidnapping, aggravated vehicular homicide, aggravated arson, aggravated child abuse and neglect, any other Class A felony which causes death or serious bodily injury, or an attempt to commit any of the aforementioned offenses, the district attorney general shall seek to have the juvenile transferred to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The state shall have the burden of proving that reasonable grounds to believe that the criterion set out in (a)(4)(A) exists. There shall be a rebuttable presumption that there are reasonable grounds to believe that the criteria in subdivision (a)(4)(B) and © exist, and the child shall have the burden of rebutting said presumption and proving that there are reasonable grounds to believe that he/she does not meet said criteria and therefore should remain within the jurisdiction of the juvenile court;

(2) If the juvenile was sixteen (16) years of age or more at the time of the alleged delinquent conduct, or the child was less than sixteen (16) years of age if such child was charged with the offense of first degree murder, second degree

murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping, especially aggravated kidnapping, aggravated vehicular homicide, aggravated arson, aggravated child abuse and neglect, any other Class A felony which causes death or serious bodily injury, or an attempt to commit any of the aforementioned offenses, the district attorney general may seek to have the juvenile transferred to the sheriff of the county to be held according to law and to be dealt with as an adult in the criminal court of competent jurisdiction. The state shall have the burden of proving that there are reasonable grounds to believe that the criteria in subsection (a)(4)(A) and © exist. There shall be a rebuttable presumption that reasonable grounds exist to believe that the criterion in subsection (a)(4)(B) exists. The child shall have the burden to rebut said presumption and to prove that there are reasonable grounds to believe the criterion in (a)(4)(B) does not exist.

(3) The district attorney general may not seek, nor may any child transferred under the provisions of this section receive, a sentence of death for the offense for which the child was transferred.

(4) The above provisions shall apply to offenses that occur on or after July 1, 1997. The remaining subdivisions of subsection (a) shall be re-designated appropriately.

SECTION 4. Tennessee Code Annotated, Section 37-1-134(a)(4) is amended by deleting the words "there are reasonable grounds to believe that" after the word "that".

SECTION 5. Tennessee Code Annotated, Section 37-1-134 is amended by adding a new, appropriately designated subsection:

() If the juvenile court declines to transfer the case, the state shall have the right to appeal such refusal to transfer the child to the criminal court that would have had

jurisdiction if the case had been transferred. Such court shall hear the witnesses and try the case de novo. The appeal shall be perfected within ten (10) days, excluding nonjudicial days, following the court's order declining to transfer the case.

SECTION 6. Tennessee Code Annotated, Section 37-1-137 is amended by deleting (a)(1)(B) in its entirety. The remaining subsections shall be re-designated appropriately.

SECTION 7. Tennessee Code Annotated, Section 37-1-137 is amended by deleting (c)(2) in its entirety. The remaining subsections shall be re-designated appropriately.

SECTION 8. Tennessee Code Annotated, Section 37-1-137 is amended by deleting (g)(3) in its entirety. The remaining subsections shall be re-designated appropriately.

SECTION 9. Tennessee Code Annotated, Section 37-1-137 is amended by deleting subsection (h)(1)-(6) in its entirety.

SECTION 10. Tennessee Code Annotated, Title 40, Chapter 35, Part 1 is amended by adding the following, appropriately designated section:

-Violent Adolescent Track - Sentencing - Eligibility - Transfer Release.

(a) The court may sentence violent adolescents who have been transferred to criminal court from juvenile court and subsequently convicted in criminal court to the department's violent adolescent track which shall serve defendants who are at least sixteen (16) years of age and under twenty-one years (21) of age. A sentence to the violent adolescent track is in addition to any sentence imposed pursuant to T.C.A. § 40-35-104.

For purposes of this section,

"violent adolescent offender" means a person who, at the time of the commission of the offense(s) for which he/she is being sentenced was under eighteen (18) years of age and prior to the commission of said offense(s) had not been transferred to the jurisdiction of the criminal court from the jurisdiction of the juvenile court; at the time of sentencing was under nineteen (19) years; and is

being sentenced for having been convicted of the offense of second degree murder, rape, aggravated rape, rape of a child, aggravated robbery, especially aggravated robbery, kidnapping, aggravated kidnapping, especially aggravated kidnapping, aggravated vehicular homicide, aggravated arson, aggravated child abuse and neglect, any other Class A felony which causes death or serious bodily injury, or an attempt to commit any of the aforementioned offenses. A defendant convicted of first degree murder shall not be eligible for the violent adolescent track.

(b) Prior to sentencing, the court shall order a presentence investigation and report to be made as required under T.C.A. § 40-35-205. Except, however, the exception to such investigation and reports under T.C.A. § 40-35-203 shall not apply and such investigations and reports shall be mandatory in any case in which it is contemplated that a defendant shall be sentenced to the violent adolescent track.

© The provisions regarding the separation and removal of juveniles and adults under T.C.A. § 37-1-134(j)(k) shall not apply to the violent adolescent track.

(d) Criteria for eligibility for the violent adolescent track is:

(1) The offense was committed on or after July 1, 1997 and prior to the defendant's eighteenth (18th) birthday;

(2)(A) A defendant shall be at least sixteen (16) years of age before being placed in the violent adolescent track. Defendants who are under the age of sixteen (16) years of age at the time of sentencing may be sentenced to the violent adolescent track but they shall initially be placed in a facility for juveniles operated by the department of children's services.

(B) Upon reaching the age of sixteen (16) years of age, such defendant shall automatically be transferred to the department of correction for placement in the violent adolescent track. Except, however,

in the discretion of the commissioner of children's services or the commissioner's designee it may be determined that a defendant who is being served in a department of children's services facility would be at risk of harm if transferred to the department of correction or that said defendant can continue to benefit from placement in the juvenile facility. If such determination is made, the defendant may remain in the department of children's services facility. If, at any point after this determination is made, the commissioner of children's services or the commissioner's designee determines that the circumstances which led to the retention of the defendant in the department of children's services facility no longer exist, the defendant may be immediately transferred to the department of correction. In any event, a defendant shall be transferred to the department of correction to complete his/her sentence no later than upon reaching his/her eighteenth (18th) birthday.

(e) A defendant who has been sentenced to the violent adolescent track shall be eligible for release pursuant to T.C.A. 40-35-501; except however, when a defendant who has participated in the violent adolescent track reaches his/her twenty-first (21st) birthday he/she shall be entitled to a release hearing before the board of paroles regardless of the amount of time remaining on his/her sentence if the defendant meets the criteria in T.C.A. § 40-35-501(k). If the board of paroles grants the release, the defendant shall be released and placed on parole. If release is not granted, the defendant shall be transferred to an appropriate department of correction facility to complete serving his/her sentence.

(f) If a defendant reaches his/her release eligibility date prior to his/her twenty-first (21st) birthday and the defendant is not granted release by the board of paroles, the board shall set a new date for a release hearing. If the new date is prior to the

defendant's twenty-first (21st) birthday, the defendant shall remain in the violent adolescent track unless specified otherwise by the board. If the new date is past the defendant's twenty-first (21st) birthday, the defendant shall be transferred to another appropriate facility of the department. If such transfer takes place prior to the defendant's eighteenth (18th) birthday, the defendant shall be housed separate and apart from adult offenders.

(g) If at any time a defendant who has been sentenced to the violent adolescent track is not progressing satisfactorily in said program, the department shall determine whether the defendant shall be terminated from the violent adolescent track and be placed in a more appropriate institution. The department shall provide appropriate due process to the defendant in making any decision to terminate the defendant from the violent adolescent track. If a defendant under the age of eighteen (18) years of age is to be transferred from the violent adolescent track to another institution, such person shall be housed separate and apart from adult offenders.

SECTION 11. Tennessee Code Annotated, Section 40-35-501(I)(1) is amended by deleting the first word of the sentence and adding the following words in its place "Except as provided by Section 10 of this Act, there".

SECTION 12. If any provision of this act, or the application thereof, to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 13. This act shall take effect July 1, 1997, the public welfare requiring it.